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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/636,014   | 08/06/2003  | Claude Leon Hembert  | GER-0276-C          | 1542             |
| 7590   | 09/22/2005  |                      | EXAMINER            |                  |
| Daniel F. Drexler<br>CANTOR COLBURN LLP<br>55 Griffin South Road<br>Bloomfield, CT 06002 |             |                      | GROSSO, HARRY A     |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3727                |                  |

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                      |
|------------------------------|------------------------|----------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>  |
|                              | 10/636,014             | HEMBERT, CLAUDE LEON |
|                              | <b>Examiner</b>        | <b>Art Unit</b>      |
|                              | Harry A. Grosso        | 3727                 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 August 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. 09/936,093.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preamble of claim 19 does not match the preamble of the preceding claims on which it depends. This results in some confusion as to what is intended. Is the applicant referring to the thermoplastic resin of the shell of the device as the preceding claim or is the applicant now referring to a material of the container? For the purpose of addressing this application, the examiner will interpret this claim as relating to the thermoplastic resin of the shell of the device.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-5, 7, 9 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Brissier et al (4,815,605) (Brissier).

Regarding claims 1, 4, 9 and 12, Brissier discloses a container or tank (14, Figure 1) with a dome end and a device (24, column 3, lines 39-46) for protecting the

container comprising a shell (28) and a compressible element (30), and the device covers the entirety of the dome of the container and a portion of the side wall.

Regarding claims 3 and 11, Brissier discloses the compressible element is polyurethane foam (column 3, lines 42-43).

Regarding claims 5 and 13, Brissier discloses the shell has an end corresponding to the side wall of the container, a first wall parallel to an axis of the container and an end corresponding to the dome of the container, a second wall perpendicular to the axis of the container with the first and second walls meeting to form a rounded zone (Figure 1).

Regarding claim 7, Brissier discloses the device is removably mounted on the container (column 3, lines 43-46).

#### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3-5, 7, 9, 11-13 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hembert (5,004,120) in view of Brissier.

Regarding claims 1, 4, 9, 12 and 20, Hembert discloses a container composed of a composite material intended to contain a fluid under pressure (column 1, lines 7-12) with a dome end and a device (column 2, lines 37-51) for protecting the container comprising a shell (22) and a compressible element (23). Hembert does not teach that

the device covers the entirety of the dome of the container and a portion of the side wall. Brissier discloses a container with a protective device that covers the entirety of the dome of the container and a portion of the side wall (24, Figure 1, column 3, lines 39-46). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a protective device that covers the entirety of the dome of the container and a portion of the side wall as disclosed by Brissier in the container disclosed by Hembert to provide protection for the entire dome and adjacent side wall portion against damage.

Regarding claims 5 and 13, Brissier does not teach that the shell has an end corresponding to the side wall of the container, a first wall parallel to an axis of the container and an end corresponding to the dome of the container, a second wall perpendicular to the axis of the container with the first and second walls meeting to form a rounded zone. Brissier discloses a device and the shell has an end corresponding to the side wall of the container, a first wall parallel to an axis of the container and an end corresponding to the dome of the container, a second wall perpendicular to the axis of the container with the first and second walls meeting to form a rounded zone (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a protective device with the shell having an end corresponding to the side wall of the container, a first wall parallel to an axis of the container and an end corresponding to the dome of the container, a second wall perpendicular to the axis of the container with the first and second walls meeting to form a rounded zone as disclosed by Brissier in the container disclosed by Hembert to

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provide improved protection for the entire dome and adjacent side wall portion against damage.

Regarding claims 3 and 11, Hembert does not disclose the compressible element is an expanded synthetic material. Brissier discloses the compressible element is polyurethane foam (column 3, lines 42-43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a compressible element of polyurethane foam as disclosed by Brissier in the container disclosed by Hembert to provide a material that is light weight and has known capability to absorb an impact.

Regarding claim 7, Hembert discloses the device is removably mounted on the container (column 2, lines 37-45).

7. Claims 6, 8, 14, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hembert and Brissier as applied to claims 1 and 9 above, and further in view of Starling et al (4,573,603) (Starling).

Regarding claims 6 and 14, the containers of claims 1 and 9 are disclosed and Hembert further discloses a connecting piece at a top of the dome (6). Neither Hembert nor Brissier teaches the use of an annular projection on the device having a height such that the annular projection extends beyond the end of the connecting piece. Starling discloses a container with a protective device (40, Figure 2) on the dome, a connecting piece (28) and an annular ring on the device (44) extending beyond the end of the connecting piece. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an annular ring on the

device extending beyond the end of the connecting piece as disclosed by Starling in the container and device disclosed by Hembert and Brissier to protect the connecting piece and allow the container to stand on end without interference from the connecting piece.

Regarding claims 8 and 16, the device of claims 6 and 14 is disclosed as discussed in the preceding paragraph and Hembert further discloses that the connecting piece is threaded (25) at the free end and the device surrounds the connecting piece so an exterior face of the shell is set back from the end of the connecting piece and a tapped ring (24) is screwed onto the connecting piece to mount the device on the dome (Figure 1, column 2, lines 37-40).

Regarding claim 15, the container of claim 14 is disclosed and Hembert further discloses that the device is removably mounted to the container as discussed in the preceding paragraph.

8. Claims 2, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brissier in view of Matsuno et al (5,906,286) (Matsuno). Brissier discloses the device of claim 1 but does not teach the shell is made of a thermoplastic resin. Matsuno discloses a container with a dome end and a shell (4, Figure 1) that can be made of a polycarbonate resin (column 15, lines 40-45) that can be formed by blow molding, a method well known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a shell which can be made of a polycarbonate resin as disclosed by Matsuno in the device disclosed by Brissier to provide a shell which is light weight and can be formed by blow molding, a method well known in the art.

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9. Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hembert and Brissier as applied to claim 9 above, and further in view of Matsuno. The container of claim 9 is disclosed but Hembert and Brissier do not teach the shell of the device is made of a thermoplastic resin. Matsuno discloses a container with a dome end and a shell (4, Figure 1) that can be made of a polycarbonate resin (column 15, lines 40-45) that can be formed by blow molding, a method well known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a shell which can be made of a polycarbonate resin as disclosed by Matsuno in the device disclosed in claim 9 to provide a shell which is light weight and can be formed by blow molding, a method well known in the art.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Nathan Newhouse  
Supervisory Patent Examiner  
Art Unit 3727

  
**Stephen K. Cronin**  
Primary Examiner

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